

## **DECISION**

### **Introduction**

This hearing dealt with the Tenant's Application for Dispute Resolution under the *Residential Tenancy Act* (the "Act") for:

- cancellation of the Landlord's One Month Notice to End Tenancy for Cause (One Month Notice) under section 47 of the Act
- a Monetary Order for compensation for damage or loss under the Act, regulation or tenancy agreement under section 67 of the Act
- an order for the Landlord to make repairs to the rental unit under sections 32 and 62 of the Act
- an order for the Landlord to provide services or facilities required by law under section 27 of the Act
- an order requiring the Landlord to comply with the Act, regulation or tenancy agreement under section 62 of the Act
- authorization to recover the filing fee for this application from the Landlord under section 72 of the Act

It also dealt with the Landlord's Application under Act for:

- an Order of Possession based on a One Month Notice to End Tenancy for Cause (One Month Notice) under sections 47 and 55 of the Act
- authorization to recover the filing fee for this application from the Tenant under section 72 of the Act

The Tenant MM and the two agents representing the Landlord attended the hearing.

### **Service of Notice of Dispute Resolution Proceeding (Proceeding Package)**

Both the Landlord and the Tenant acknowledged receiving the other party's Proceeding Package by registered mail. I therefore find that service was done in accordance with the Act.

## **Service of Evidence**

Both the Landlord and the Tenant acknowledged receiving the other party's evidence package. I therefore find that service was done in accordance with the Act.

## **Preliminary Issue - Severance**

At the outset of the hearing, I advised the parties that due to time limitations, I was unlikely to be able to address all the issues raised by the parties and that I would only deal with the most pressing issue, which was the One Month Notice. I informed the Tenant that all other issues raised in his application, with the exception of the request to recover the filing fee, would be dismissed with leave to reapply.

## **Issues to be Decided**

**Is the One Month Notice valid? If yes, should the Landlord be granted an Order of Possession?**

**Should either party recover the filing fee?**

## **Background and Evidence**

The tenancy began on July 1, 2013. Monthly rent is currently \$1,176.00 and is payable on the first day of the month.

On October 25, 2023, the Landlord sent the One Month Notice by registered mail. The One Month Notice is signed by the Landlord, provides the address of the rental unit, an effective date of November 28, 2023, and lists three grounds for ending the tenancy. It states that the Tenant or a person permitted on the property by the Tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord, that the Tenant or a person permitted on the property by the tenant has put the landlord's property at significant risk, and that the Tenant breached a material term of the tenancy agreement and did not correct the breach within a reasonable time after receiving written notice to do so.

In the box on the One Month Notice for additional details, it states that the Tenant failed to comply with orders in a previous RTB decision relating to preparation of the rental unit for bed bug treatment. In addition, it states that the bed bug infestation is ongoing despite numerous treatments paid for by the Landlord, and that "viable bed bugs" in ziplock bags are placed on the building manager's door by the Tenant. It also states that the Tenant refuses to pay for any pest control treatments. Finally, it states that "As landlords, we are applying for eviction, as we require full access to the suite to clean it out and strip it to the studs to remediate due to long-term bed bug infestation. Tenant is non-cooperative."

The Tenant filed for dispute resolution on November 3, 2023.

The background of the One Month Notice is extensive. On February 1, 2022, an RTB Arbitrator rendered a decision requiring the Landlord to hire a qualified pest control company. The Arbitrator also made an order requiring the Tenant to comply with instructions from the pest control company and to prepare the rental unit for treatment.

The Landlord's building manager said that the Landlord has made extensive efforts since then to address the bed bug issue, including by conducting 9 treatments by a qualified pest control company since February 2022. He said that the Tenant has made numerous demands related to the infestation. He said that the suite needs to be remediated and that this can only be done if it is vacant.

The Landlord's other agent (who works in the Landlord's corporate office), said that the Tenant significantly interfered with and unreasonably disturbed another occupant or the landlord by repeatedly sending emails and other communications demanding compensation and accusing the Landlord of not treating his unit properly. He said this constitutes harassment and disturbance of the building manager.

The agent also said that the Tenant has put the Landlord's property at significant risk by failing to prepare for treatments adequately and disrupting the efficacy of the treatments. He said that the bedbug infestation is ongoing because of the Tenant's actions, and that this is shown by the fact that the infestation is contained to his rental unit. The building manager said that the Tenant did not adequately follow the pest control company's instructions. In particular, the rental unit was cluttered, items were not placed in plastic bags, clothes were left in the closet, and toys and other items were left on shelves.

The corporate agent also said that the Tenant breached a material term by failing to "take necessary steps to repair damage to the residential property" and "maintain[ing] reasonable health, cleanliness, and sanitary standards", as set out in section 27 of the tenancy agreement. He said that written notice was given to the Tenant on several occasions, including on February 3, 2022, June 15, 2023, August 22, 2023 and October 26, 2023.

The Tenant said that the evidence shows that the preparation he did was satisfactory. In particular, he pointed to a letter from the pest control company dated May 16, 2022 stating as follows:

*Although I observed that the preparation was satisfactory, I couldn't help but mention to Leo that the suite is quite clogged with stuff, and the best option for the tenants would be to rent a commercial storage and put the items which aren't in use over there in order to achieve the best result.*

He said he had never been told that his preparation was inadequate or not done properly. He said that the current issue stems from the couch, which was not treated properly by the pest control company. He said that the pest control company has since advanced an alternative treatment and that the Landlord has refused to act on it.

The Tenant also said that there is no evidence that remediation is going to be conducted and that this is not a valid reason to permanently evict him.

He said he did not harass the Landlord or the building manager, but instead brought his concerns to their attention, which he was required to do because it could impact other units.

He said he has not put the property at significant risk because he has followed all the preparatory steps set out by the pest control company.

Finally, he said that he has not breached a material term. His home is clean and his family is diligent about keeping it that way. He said his suite is cleaner than any of the neighbouring suites.

## **Analysis**

### **Is the One Month Notice valid? If yes, should the Landlord be granted an Order of Possession?**

Section 47 of the Act states that a landlord may issue a Notice to End Tenancy for Cause to a tenant if the landlord has grounds to do so. Section 47 of the Act states that upon receipt of a Notice to End Tenancy for Cause the tenant may, within ten days, dispute the notice by filing an application for dispute resolution with the Residential Tenancy Branch. If the tenant files an application to dispute the notice, the landlord bears the burden to prove the grounds for the One Month Notice.

The Tenant disputed this notice on November 3, 2023. I find the Tenant was served on October 26, 2023. The Tenant disputed the One Month Notice within 10 days. I find that the Landlord therefore has the burden to prove that they have sufficient grounds to issue the One Month Notice.

Because the Landlord has raised four grounds for ending the tenancy, I will address each in turn.

#### **1) The Rental Unit requires remediation which can only be done if it is vacant**

This ground for ending the tenancy was mentioned in the details section of the One Month Notice, which says "As landlords, we are applying for eviction, as we require full access to the suite to clean it out and strip it to the studs to remediate due to long-term bed bug infestation. Tenant is non-cooperative." In addition, at the hearing, the Landlord placed considerable emphasis on this ground, essentially saying that it was the reason the One Month Notice was issued.

Section 47 sets out the following grounds for ending a tenancy:

47 (1)A landlord may end a tenancy by giving notice to end the tenancy if one or more of the following applies:

- (a)the tenant does not pay the security deposit or pet damage deposit within 30 days of the date it is required to be paid under the tenancy agreement;

- (b)the tenant is repeatedly late paying rent;

- (c)there are an unreasonable number of occupants in a rental unit;

- (d)the tenant or a person permitted on the residential property by the tenant has

- (i)significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property,

- (ii)seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant, or

- (iii)put the landlord's property at significant risk;

- (e)the tenant or a person permitted on the residential property by the tenant has engaged in illegal activity that

- (i)has caused or is likely to cause damage to the landlord's property,

- (ii)has adversely affected or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant of the residential property, or

- (iii)has jeopardized or is likely to jeopardize a lawful right or interest of another occupant or the landlord;

- (f)the tenant or a person permitted on the residential property by the tenant has caused extraordinary damage to a rental unit or residential property;

- (g)the tenant does not repair damage to the rental unit or other residential property, as required under section 32 (3) [obligations to repair and maintain], within a reasonable time;

- (h)the tenant

- (i)has failed to comply with a material term, and

- (ii)has not corrected the situation within a reasonable time after the landlord gives written notice to do so;

(i)the tenant purports to assign the tenancy agreement or sublet the rental unit without first obtaining the landlord's written consent as required by section 34 [assignment and subletting];

(j)the tenant knowingly gives false information about the residential property to a prospective tenant or purchaser viewing the residential property;

(k)the rental unit must be vacated to comply with an order of a federal, British Columbia, regional or municipal government authority;

(l)the tenant has not complied with an order of the director within 30 days of the later of the following dates:

(i)the date the tenant receives the order;

(ii)the date specified in the order for the tenant to comply with the order.

None of these grounds in the Act relate to requiring vacant possession to repair or remediate a rental unit. This is because notice under section 47 of the Act is “for cause”, meaning that it relates to wrongful or negligent conduct on the part of the tenant.

Section 49.2 of the Act does allow a landlord to apply to end a tenancy and obtain an order of possession when renovation or repairs are going to be conducted, however, the Landlord in this case has not made such an application.

In sum, the need to remediate or repair the unit is not a valid ground to end the tenancy under section 47 of the Act.

## **2) Tenant has significantly interfered with or unreasonably disturbed another occupant or the Landlord**

In support of this ground, the Landlord said the Tenant failed to adequately prepare the unit for pest control treatment, that the Tenant would send harassing emails and other communications to the building manager, and that the Tenant accused the Landlord of failing to treat his unit properly. In particular, the Landlord said the building manager was harassed by the Tenant. The building manager said that the Tenant went to the police to try to press charges against him in relation to one of the treatments he conducted, and that the Tenant has repeatedly sought compensation from the Landlord in relation to the bed bug issue.

I accept that as an employee and agent of the Landlord, the building manager is considered to be a “landlord” under the Act. In other words, significantly interfering with or unreasonably disturbing the building manager would be a valid reason to end the tenancy.

I do not accept, however, that the Tenant has done so. In my review of the evidence, including the correspondence between the parties and the testimony, I find that the

Tenant took the bed bug problem seriously, as one should, and repeatedly pressed the Landlord (including his on-site representative, the building manager) for action because it was impacting him, his family, and his community. It is understandable that the Tenant would be upset given that this problem has been ongoing for a considerable amount of time. The Tenant is entitled to seek compensation from the Landlord and even complain to authorities. While excessive complaints could constitute an unreasonable disturbance or significant interference, I do not find that to be the case here.

In the documentary evidence (including on the One Month Notice), the Landlord said that the Tenant left a ziploc bag of viable (ie. live) bed bugs at the building manager's door. The documentary evidence shows that the Tenant's position was that he and the building manager had agreed that this was an acceptable practice to prove that there was a bed bug issue (ie. that the building manager consented to this) and that he actually hand delivered the bag to the building manager. The Landlord did not address this issue at the hearing. While I do not think that this is an ideal practice, in the absence of evidence that the building manager did not consent to this and also that it was done in a reckless manner (ie. there was a risk that the bag could open, for example), I do not find that this significantly interfered with or unreasonably disturbed the Landlord. I would suggest, however, that the Tenant refrain from doing this going forward and find some other manner of proving the existence of live bed bugs (for example, videos with his phone).

I am therefore not satisfied that this ground is valid.

### **3) Tenant has put the Landlord's property at significant risk**

The Landlord claims that the Tenant has put the Landlord's property at significant risk by failing to prepare for treatments adequately and "disrupting the efficacy" of the treatments. In sum, the Landlord says that the bedbug infestation is now the Tenant's fault, because he has not prepared adequately in the lead up to treatments.

I do not agree with the Landlord. The Landlord's own evidence shows that the Tenant's preparation was "satisfactory", as the letter from the pest control professional shows.

I prefer the written evidence from the pest control professional to the evidence of the building manager, who, it should also be said, acknowledged that the pest control professional did not directly complain about the Tenant's preparation.

Given that I find that the Tenant prepared the rental unit in accordance with the pest control company's requirements, I find that he did not put the Landlord's property at significant risk and that this ground is also not valid.

### **4) Breach of a material term that was not corrected within a reasonable time after written notice to do so**

The Landlord said that the Tenant breached the following material term in the tenancy agreement:

## 27. REPAIRS.

[...]

The tenant must maintain reasonable health, cleanliness, and sanitary standards throughout the rental unit and the residential property to which the tenant has access. The tenant must take the necessary steps to repair damage to the residential property caused by the actions or neglect of the tenant or a person permitted on the residential property by that tenant... If the tenant does not comply with the above obligations within a reasonable time, the landlord may discuss the matter with the tenant and may apply for dispute resolution under the Act for the cost of repairs, serve a Notice to End Tenancy, or both.

Policy Guideline 8 states as follows:

To end a tenancy agreement for breach of a material term the party alleging a breach – whether landlord or tenant – must inform the other party in writing:

- that there is a problem;
- that they believe the problem is a breach of a material term of the tenancy agreement;
- that the problem must be fixed by a deadline included in the letter, and that the deadline be reasonable; and
- that if the problem is not fixed by the deadline, the party will end the tenancy.

In light of my finding above, I do not accept that the Tenant is in breach of this term of the tenancy agreement, whether it is material or not. There is no evidence that the Tenant is responsible for the bed bug infestation. The Tenant's preparation in anticipation of treatments has been satisfactory.

I have not been shown any evidence to suggest that the Tenant has not maintained reasonable health, cleanliness, or sanitary standards.

This ground for ending the tenancy is not valid.

### **Should either party recover the filing fee?**

The Tenant was successful and is authorized to recover the filing fee.

### **Conclusion**

The Landlord's application is dismissed without leave to reapply.



The Tenant's application to cancel the One Month Notice is granted. The remainder of the Tenant's application is dismissed with leave to reapply, with exception of the request to recover the filing fee, which is granted.

The Tenant is entitled to deduct \$100.00 from a rental payment to the Landlord on one occasion only.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under section 9.1(1) of the Act.

Dated: December 27, 2023

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Residential Tenancy Branch